

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANTHONY L. WARE,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 05-362-SLR
)	
BALL PLASTIC CORP.,)	
)	
Defendant.)	

O R D E R

At Wilmington this ^{24th} day of January, 2006, defendant having filed a motion to dismiss the complaint with an accompanying brief and appendix on December 2, 2005 (D.I. 6, 7, 8);

IT IS ORDERED that:

1. Because matters outside of the pleadings were presented to the court in support of said motion to dismiss, the court will review the motion as one for summary judgment pursuant to Fed. R. Civ. P. 12(b) and 56(b).

2. Because defendant relies upon an affidavit in support of the motion, the averments of fact in the affidavit shall be accepted as true, pursuant to Fed. R. Civ. P. 56(e), for the purpose of deciding the motion unless plaintiff timely files a counter-affidavit or statement under penalty of perjury refuting said averments.

3. Briefing on this motion shall proceed in

accordance with the following schedule:

a) Plaintiff shall file and serve a response to defendant's motion (including an answering brief and accompanying affidavits, exhibits, etc., if any) on or before **February 24, 2006.**

b) Defendant may file and serve a reply brief on or before **March 10, 2006.**



United States District Judge